

CWA 404g –Talking Points

- I'd also like to talk about Clean Water Act Section 404 – both a national rulemaking we are undertaking and what we are doing to support Florida.
- First, The Trump Administration is taking action to support state and tribal assumption of the Section 404 permit program under the Clean Water Act (CWA).
- By empowering states and tribes to take on this permitting responsibility, greater efficiencies can be achieved in infrastructure and other permitting decisions while continuing to protect the environment.
- Under Section 404 of the Clean Water Act, a permit is required before dredged or fill material can be discharged into navigable waters or certain wetlands. Activities undertaken using such a permit are infrastructure projects like highways or airports, mining operations, dam or levee construction, or other economic development.
- To date, only Michigan and New Jersey have assumed administration of the Section 404 program - the Army Corps of Engineers retains permitting authority for the rest of the country. More than ten other states and tribes are working toward or investigating the possibility of assuming the 404 program, including Florida, Arizona, and Minnesota.
- As a first step to improving the assumption process for states and tribes, the Assistant Secretary of the Army for Civil Works on July 30, 2018, signed a guidance memorandum clarifying the U.S. Army Corps of Engineers' policy regarding which water bodies the Corps must retain Clean Water Act (CWA) authority over when a state or tribe assumes jurisdiction under Section 404(g) of the CWA. This guidance is consistent with the recommendations of a recent Federal Advisory Committee report.
- The USACE followed up on its July 2018 clarifying memo by sending letters to all fifty State Governors and the tribal leaders for all the Federally recognized tribes encouraging them to assume this traditional Federal permitting ability.
- EPA has also initiated a rulemaking effort to modernize the Section 404 state assumption process state assumption process of the Clean Water Act Section 404 permitting program.
- Through this effort, EPA is seeking to clarify assumption requirements, improve the usability of the regulations, and foster a greater long-term effectiveness by the states and authorized tribes in assuming the program.
- We will be engaging with states, tribes and other stakeholders this fall 2018 to gather critical input prior to issuing a proposed rule.

Florida

- Florida approached EPA in June 2017 expressing interest in assuming the 404 program. EPA is actively engaged with the Florida Department of Environmental Protection to facilitate development of a complete assumption package.

- EPA has also initiated discussion with the Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service and Tribes to explain the 404 assumption process and their role during and after a state program is approved.
- September 20, 2018, Acting Administrator Wheeler, sent a message to all state Governors and all Tribal leaders regarding EPA's support for Assumption as well as our intent to seek their input this fall on regulatory revisions to this program.